

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XVII. PUBLIC WELFARE

CHAPTER 118G. HEALTH CARE FINANCE AND POLICY

Chapter 118G: Section 28. Definitions for Secs. 28 to 33 relating to personal care attendant quality home care workforce council

Section 28. As used in sections 28 to 33, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:—

“PCA quality home care workforce council”, “workforce council” or “the council”, the Personal Care Attendant quality home care workforce council established under section 29.

“Consumer,” a person to whom a personal care attendant provides personal care services.

“Personal care attendant,” a person, including a personal aide, who has been selected by a consumer or the consumer’s surrogate to provide personal care services to persons with disabilities or seniors under the MassHealth personal care attendant program or any successor program.

“Surrogate” means the consumer’s legal guardian or person identified in a written agreement with the consumer as responsible for hiring, directing and firing on behalf of the consumer.

Chapter 118G: Section 29. Personal care attendant quality home care workforce council; members

[Text of section added by 2006, 268, Sec. 1. See also, Section 29, added by 2006, 174, above.]

Section 29. (a) The PCA quality home care workforce council is established in the executive office of health and human services but shall not be subject to the control thereof to insure the quality of long-term, in-home, personal care by recruiting, training and stabilizing the work force of personal care attendants.

(b) The PCA quality home care workforce council shall consist of 9 members appointed in accordance with this section. At all times, a majority of the members of the council shall be consumers as defined in this chapter. In making appointments to the council, the governor shall appoint the secretary of health and human services or his designee as chairperson, the director of the department of workforce development or his designee and 1 member from a slate of 3 consumers recommended by the governor’s special advisory commission on disability policy. The auditor shall appoint 1 member from a slate of 3 consumers recommended by the developmental disabilities council, 1 member from a

slate of 3 consumers recommended by the Massachusetts office on disability, and 1 member from a slate of 3 consumers recommended by the statewide independent living council. The attorney general shall appoint 1 member from a slate of 3 consumers or consumer surrogates recommended by the Massachusetts home care association, 1 member from a slate of 3 consumers or consumer surrogates recommended by the Massachusetts council on aging and 1 member chosen at his discretion. The secretary of the executive office of health and human services or his designee and the director of the department of workforce development or his designee shall be permanent members during their term in office. One member of the council first appointed shall serve a 1 year term, 3 shall serve a 2 year term, and 3 shall serve a 3 year term, the term of each member to be designated by the governor. Subsequent appointees to the council shall serve 3-year terms. If a vacancy occurs, the executive officer who made the original appointment shall appoint a new council member to serve the remainder of the unexpired term or, in the event that the vacancy occurs as the result of the completion of a term, to serve a full term, and such appointment shall become immediately effective upon the member taking the appropriate oath. If the departing council member was appointed pursuant to a recommendation made in accordance with this paragraph, the executive officer shall make the new appointment from a slate of 3 recommendations put forth by the entity that originally recommended the departing council member. Members of the council may serve for successive terms of office. A majority of the council shall constitute a quorum for the transaction of any business. Members of the council shall not receive compensation for their council service but members shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

Chapter 118G: Section 30. Duties of workforce council; list of personal care attendants

Section 30. (a) The workforce council shall carry out the following duties:

1. Undertake recruiting efforts to identify and recruit prospective personal care attendants;
2. Provide training opportunities, either directly or through contract, for personal care attendants and consumers;
3. Provide assistance to consumers and consumer surrogates in finding personal care attendants by establishing a referral directory of personal care attendants. Before placing a personal care attendant on the referral directory, the workforce council shall determine that the personal care attendant has met the requirements established by the executive office in its applicable regulations and has not stated in writing a desire to be excluded from the directory;
4. Provide routine, emergency and respite referrals of personal care attendants to consumers and consumer surrogates who are authorized to receive long-term, in-home personal care services through a personal care attendant;

5. Give preference in the recruiting, training, referral and employment of personal care attendants to recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment; and

6. Cooperate with state and local agencies on health and aging and other federal, state and local agencies to provide the services described and set forth in this section. If, in the course of carrying out its duties, the PCA quality home care workforce council identifies concerns regarding the services being provided by a personal care attendant, the workforce council must notify the relevant office.

(b) In determining how best to carry out its duties, the PCA quality home care workforce council must identify existing personal care attendant recruitment, training and referral resources made available to consumers or the consumer's surrogate by other state and local public, private and nonprofit agencies. The council may coordinate with the agencies to provide a local presence for the council and to provide consumers or the consumer's surrogate greater access to personal care attendant recruitment, training and referral resources in a cost-effective manner. Using requests for proposals or similar processes, the council may contract with the agencies to provide recruitment, training and referral. The council must provide an opportunity for consumer participation in coordination efforts.

(c) The commonwealth shall provide to the council a list of all personal care attendants who have been paid through the MassHealth personal care attendant program and shall update the list not less than every 6 months thereafter upon the establishment to ensure that the council has a complete and accurate list at all times.

Section 31. Consumers' right to select and manage employment of personal care attendants; public employee status; strikes and work stoppages; collective bargaining; liability of council members

Section 31. (a) Consumers or the consumer's surrogate retain the right to select, hire, schedule, train, direct, supervise and terminate any personal care attendant providing services to them. Consumers or the consumer's surrogate may elect to receive long-term, in-home personal care services from personal care attendants who are not referred to them by the council.

(b) Personal care attendants shall be considered public employees, as defined by and solely for the purposes of, chapter 150E and section 17J of chapter 180. Said chapter 150E shall apply to personal care attendants except to the extent that chapter 150E is inconsistent with this section, in which case this section shall control. In addition, personal care attendants shall be treated as state employees solely for the purposes of sections 17A and 17G of chapter 180. Personal care attendants shall not be considered public employees or state employees for any purpose other than those set forth in this paragraph. The PCA quality home care workforce council shall be the employer, as defined by and solely for the purposes of said chapter 150E and sections 17A, 17G and 17J of said chapter 180 and deductions under said sections 17A, 17G and 17J may be

made by any entity authorized by the commonwealth to compensate personal care attendants through the MassHealth personal care attendant program. Personal care attendants shall not be eligible for benefits through the group insurance commission, the state board of retirement or the state employee workers' compensation program.

(c) Personal care attendants who are employees of the council under this section are not, for that reason, public employees or employees of the council for any other purpose. Nothing in this chapter shall alter the obligations of the commonwealth or the consumer to provide their share of social security, federal and state unemployment taxes, Medicare and worker's compensation insurance under the Federal Insurance Contributions Act, federal and state unemployment law or the Massachusetts Workers' Compensation Act.

(d) Consistent with section 9A of chapter 150E, no personal care attendant shall engage in a strike and no personal care attendant shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by any personal care attendant.

(e) The only bargaining unit appropriate for the purpose of collective bargaining is a statewide unit of all personal care attendants. The showing of interest required to request an election is 10 per cent of the bargaining unit. An intervener seeking to appear on the ballot must make the same showing of interest.

(f) The council or its contractors may not be held vicariously liable for the action or inaction of any personal care attendant, whether or not that personal care attendant was included on the council's referral directory or referred to a consumer or the consumer's surrogate.

(g) The members of the council are immune from any liability resulting from implementation of sections 28 to 33, inclusive.

Section 32. Powers of council

Section 32. (a) The PCA quality home care workforce council may make and execute contracts and all other instruments necessary or convenient for the performance of its duties or exercise of its powers, including contracts with public and private agencies, organizations, corporations and individuals to pay them for services rendered or furnished.

(b) The council may offer and provide recruitment, training and referral services to personal care attendants and consumers of long-term in-home personal care services other than statutorily defined personal care attendants and consumers, for a fee to be determined by the council.

(c) The council may issue rules or regulations, as necessary, for the purpose and policies of sections 28 to 33, inclusive.

(d) Subject to appropriation, the chairperson of the council with the council's approval may establish offices, employ and discharge employees, agents and contractors as necessary, and prescribe their duties and powers and fix their compensation, incur expenses, and create such liabilities as are reasonable and proper for the administration of sections 28 to 33, inclusive.

(e) The council may solicit and accept for use any grant of money, services or property from the federal government, the state or any political subdivision or agency thereof, including federal matching funds under Title XIX of the Federal Social Security Act, and do all things necessary to cooperate with the federal government, the state, or any political subdivision or agency thereof, in making an application for any grant.

(f) The council may coordinate its activities and cooperate with similar agencies in other states.

(g) The council may establish technical advisory committees to assist the council.

(h) The council may keep records and engage in research and the gathering of relevant statistics.

(i) The council may acquire, hold or dispose of real or personal property, or any interest therein, and construct, lease or otherwise provide facilities for the activities conducted under sections 28 to 33, inclusive, but the workforce council may not exercise any power of eminent domain.

(j) The council may delegate to the appropriate persons the power to execute contracts and other instruments on its behalf and delegate any of its powers and duties, if consistent with the purposes of sections 28 to 33, inclusive.

(k) The council may perform other acts necessary or convenient to execute the powers expressly granted to it.

Section 33. Performance review and report

Section 33. (a) The council shall conduct a performance review every 2 years, submit a report of the review to the legislature and the governor and make the report available to the public upon submission to the governor and the legislature. The first report shall be submitted before December 1, 2008.

(b) The performance review and report shall include an evaluation of the health, welfare and satisfaction with services provided of the consumers receiving long-term in-home personal care services from personal care attendants under sections 28 to 33, inclusive, including the degree to which all required services have been delivered, the degree to which consumers receiving services from personal care attendants have ultimately required additional or more intensive services, such as home health care, or have been

placed in other residential settings or nursing homes, the promptness of response to consumer complaints and any other issue considered to be relevant.

(c) The performance review report will provide an explanation of the full cost of personal care services, including the administrative costs of the council, unemployment compensation, Social Security and Medicare payroll taxes paid and any oversight costs.

(d) The performance review report will make recommendations to the legislature and the governor for any amendments to sections 28 to 33, inclusive that will further ensure the well-being of consumers, and the most efficient means of delivering required services. In addition, the first performance review report will include findings and recommendations regarding the appropriateness of the council's assumption of responsibility for verification of hours worked by personal care attendants, payment of personal care attendants and other duties.